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CHICAGO, ILLINOIS

August 16, 1995

HAND DELIVERED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION
IN MM DOCKET NO. 94-131 & PP DOCKET NO. 93-253

Dear Mr. Caton:

Transmitted herewith are an original and 11 copies of the Petition for Partial Reconsideration and Clarification of American Telecasting, Inc. of the *Report and Order* in the above-referenced dockets (published in summary form at 60 Fed. Reg. 36524 (July 17, 1995).

Please contact the undersigned if additional information on these comments is desired.

Respectfully submitted,

Thomas J. Dougherty, Jr.
Counsel for
American Telecasting, Inc.

cc: Ms. Barbara Kreisman
Ms. Sharon Bertelsen
Mr. Keith Larson

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service	)	MM Docket No. 94-131
	)	
and	)	
	)	
Implementation of Section 309(j) of the Communications Act-Competitive Bidding	)	PP Docket No. 93-253

Directed To: The Commission

PETITION FOR PARTIAL RECONSIDERATION AND CLARIFICATION OF AMERICAN TELECASTING, INC.

AMERICAN TELECASTING, INC. ("ATI"), by its counsel and pursuant to Rule 1.429, hereby respectfully requests the Commission to reconsider, in part, or to clarify clause (iii) of Section 21.902(f)(6) and to reconsider Subsection (c) of Section 21.904, which were either promulgated in or amended by the *Report and Order* released on June 30, 1995 in the above-captioned dockets and published in summary form at 60 Fed. Reg. 36524 (July 17, 1995).

I. ATI AND ITS INTEREST IN THIS PROCEEDING

ATI, through its various subsidiaries, is the largest wireless cable operator in the United States. Over its six year history, ATI's subsidiaries have acquired channel rights by licensing and leasing, and by acquiring lease and license rights from third parties. As a result of those efforts, ATI's subsidiaries now have 37 wireless cable systems, in

operation or planned for near-term operation, having over 8 million homes within their collective signal reach. To accomplish that result, ATI has acquired from legitimate public and private sources over $250,000,000 which has been spent in or is committed to ATI's wireless cable operations.

ATI, thus, is interested in the above-captioned dockets and filed extensive comments and reply comments on the proposals made in the *Notice of Proposed Rulemaking*, 9 F.C.C. Rcd. 7665 (1994).

The *Report and Order* goes beyond what we envisioned the Commission might do to implement an auction system for MDS. The changes are so revolutionary that, to no surprise, there are some facets of the new rules that could create problems. For the most part, the Wireless Cable Association International can be expected to address these issues to the Commission's attention.

Because ATI agrees with the Association's analysis of the *Report and Order*, ATI has decided to limited its critique of the *Report and Order* to just a couple of issues.

II. RULE 21.904(c) SHOULD BE ELIMINATED BECAUSE IT WOULD ALLOW ADJACENT MARKET OPERATORS TO INTERFERE WITH LEGITIMATE ATTEMPTS TO OFFER PUBLIC SERVICE

Subsection (c) of Rule 21.904 has been changed to delete the requirement that an involuntarily upgraded station be able to upgrade without causing harmful interference. We are puzzled by that change because it would appear to require a licensee to take actions it cannot take. More important than that change, however, is the issue of whether involuntary power increase rights import detriments which outweigh their potential

benefits in the entirely new environment created by the *Report and Order* and the *Second Order on Reconsideration*.[1]

The authorization of an invariable 35 mile incumbent protected service area ("PSA") has created the opportunity to serve a large area with multiple transmitter sites. Booster stations will probably become more prevalent as a result of the expansion of the PSA. Still, unprotected booster stations are, perhaps, the inferior means of serving subscribers at remote places in the PSA. Expanding the PSA from 710 square miles to almost 5 times that area makes feasible the idea of a coordinated system of protected transmitter sites. That system of service offers efficiencies which should be encouraged.

But, it is risky if not irresponsible to use such a cellular approach when an adjacent area operator can force you to increase transmitter output power just to accommodate that operator's later proposal. Rule 21.904(c) provides the late-comer that involuntary modification power. Cellular systems require lower transmitter powers. If an adjacent area operator were to force a cellular-designed system to increase the output power of one site, there is the strong possibility that the increase in power would have a ripple effect on all other transmitter sites in the cellular system. The result could be that one or more transmitter sites--installed at great expense--would be rendered useless, that many receiver antennas would have to be re-oriented and that many subscribers would lose service entirely.

Rule 21.904(c) was promulgated without prior notice or discussion in the *Report and Order* in Docket Nos. 90-54 & 80-113 (rel. Oct. 26, 1990). It has laid fallow for

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[1] Gen. Dkt. Nos. 90-54 and 90-113, FCC 95-231 (rel. June 21, 1995).

almost 5 years. It has served no interest and, in an expanded PSA environment, its detriments far outweigh any benefits it may ever provide. The Rule should be eliminated.

III. RULE 21.902(f)(6)(iii) SHOULD BE CLARIFIED SO THAT IT IS NOT MISINTERPRETED TO LIMIT PROTECTION FROM INTERFERENCE

New Rule 21.902(f)(6) states that an:

> "application will not be accepted for filing if cochannel or adjacent channel interference is predicted at the boundary of the 56.33 km (35 mile) protected service area of the authorized or previously proposed incumbent station based on the following criteria...."

Among those criteria is an engineering assumption which appears troubling. The assumption, stated in clause (iii) is:

> "the assumed value of the desired signal level at the boundary of an incumbent station shall be -83 dBW, which is the calculated received power in free space at a distance of 56.33 km (35 miles), given an EIRP of 2000 watts and a receiver antenna gain of 20 dBi."

That assumption is inaccurate except in rare instances. Most MDS stations operate with transmitter output powers of 10 or 50 watts.[2] The assumption of the new Rule is that the desired transmitter is operating with a transmitter output power of *200 watts, or a difference of between 13 and 6 dB from ordinary transmitter operating powers*. If the assumption were used to determine whether an application may be granted, then the effect of the assumption would be to lower the cochannel DU ratios for incumbent MDS stations from 45 dB to between 39 and 32 dB.

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[2] Indeed, until 1991, the maximum E.I.R.P. of a MDS or ITFS station was limited to 10 watts. *Report and Order*, Gen. Dkts. 90-54 and 80-113, ¶ 50 (rel. Oct. 26, 1990).

That effect would be very detrimental to incumbent MDS licensed facilities, and the wireless cable operations which they support. Indeed, it would preclude cellular designs to market service and other similar attempts to reuse the spectrum which, by necessity, must use lower power.

But, we believe that the Commission did not intend that assumption in clause (iii) of new Section 21.902(f)(6) to supplant the requirement that new station proposals demonstrate adequate interference protection to the *actual* facilities requiring protection. Based upon conversations with the Commission's Staff, we believe that the assumption of that Section is intended to mirror the capabilities of a simple computer program the Commission has designed solely to determine whether a MDS application should be accepted for filing. As such, the Rule is intended to describe an initial screening of applications designed to detect only egregious cases of interference. Nonetheless, those seeking guidance on the subject from the *Report and Order* might be led to a different conclusion. The *Report and Order* states that "[t]he MDS interference standards should not be confused with the processing methods, which can only approximate the standard...."[3] But, in making that statement, the Commission refers to clause (ii) of Rule 21.902(f)(6), not clause (iii).[4] The only time the *Report and Order* offers anything relevant to the subject, it opines that the assumption of a desired station power flux density at 35 miles of -83 dBw is "approximate" to the power levels that will exist at that contour. That opinion may invite the conclusion which causes us concern. We ask that

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[3] *Report and Order*, at ¶ 71

[4] The example is a comparison of the requirement not to cause interference anywhere within a PSA versus the Commission's decision to look only at points along the PSA contour for initial application processing.

the Commission clarify that paragraph (6) of Rule 21.902(f) is nothing more than an application acceptance screening test which does not limit the requirement that 45 and 0 dB DU measurements use actual values.

IV. CONCLUSION

WHEREFORE, the foregoing premises considered, ATI respectfully requests the Commission to clarify Rule 21.902(f)(6)(iii) and to eliminate Rule 21.904(c).

AMERICAN TELECASTING, INC.

By: _____
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